

REMARKS

This responds to the Office Action dated September 30, 2008. Claims 1, 9, 20, 24, and 26-28 are amended. No claims are canceled or added. As a result, claims 1-11, 13, 14, and 16-28 remain pending in this application.

Applicant respectfully submits that the amendments and additions to the claims are fully supported by the specification, as originally filed, and that no new matter has been added. Applicant hereby respectfully requests further examination and reconsideration of the application in view of the following remarks.

§103 Rejection of the Claims

Claims 1-11, 13, 14, and 16-28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Yarin et al. (U.S. Patent No. 6,294,999) in view of LaPorte et al. (U.S. Patent Application Publication No. 2005/0182389). In view of the foregoing amendment and the following remarks, Applicant respectfully traverses this rejection.

The Office Action at page 3 admits that “Yarin . . . fails to expressly teach a medication storage, therapy, and consumption management system, comprising: an implantable device configured to implantably electrically monitor fluid retention; and receiving patient physiological data including fluid retention data collected by the implantable device.” However, the Office Action at page 4 contends that “LaPorte teaches a medication storage, therapy, and consumption management system, comprising: an implantable device configured to implantably electrically monitor fluid retention; and receiving patient physiological data including fluid retention data collected by the implantable device”. The Office Action further contends at page 4 that “[o]ne of ordinary skill in the art would have found it obvious at the time of the invention to combine the teachings of Yarin with the teachings of LaPorte with the motivation that therapeutic substance therapy in conjunction with the activities and information obtained by an implanted medical device is an important consideration in the overall treatment of a patient”.

Applicant respectfully submits that obviousness does not presently exist with respect to claims 1-11, 13, 14, and 16-28 because modification of the references, as proposed by the Office Action, is improper. For instance, Applicant asserts that there is no motivation to combine Yarin

et al. Yarin et al. appears to describe a completely external system. That is, the Smart Tray 12 of Yarin et al. is an externally disposed medication dispenser, and the appliances listed in Yarin et al. with which the Smart Tray 12 can communicate are external devices including “personal computers 22a, Web TVs 22b, weight scales 22c, refrigerators 22d, exercise devices 22e, and scanners 22f.” (Yarin et al. at col. 5, lines 53-54.) The Smart Tray 12 further includes “a receptacle that is configured to removably receive and interact with various objects . . . [such as] blood pressure monitors, thermometers, pagers, glucometers, prothrombin and coagulation monitors.” (Yarin et al. at col. 6, lines 39-44.) Again, all the listed devices intended to be used with the Smart Tray 12 of Yarin et al. are external devices. Yarin et al. states that “[a] Smart Tray according to the present invention passively and unobtrusively facilitates monitoring patient compliance with medication treatment regimens.” (Yarin et al. at col. 9, lines 63-65.) Applicant submits that there is no description in Yarin et al. related to use with internal devices.

In contrast, LaPorte et al. appears to describe a “device [that] delivers a therapeutic substance to the patient while allowing the patient to remain mobile.” (LaPorte et al. at page 1, paragraph [0007].) LaPorte et al. appears to describe “a medical therapy system including an implanted medical device 30 and a patch 32 for attachment to the skin of a patient.” (LaPorte et al. at page 2, paragraph [0041].)

As such, Applicant submits that there is no motivation to combine the non-ambulatory system of Yarin et al. with the ambulatory system of LaPorte et al. Applicant submits that one of ordinary skill in the art would not look to the ambulatory system of LaPorte et al. to modify the non-ambulatory system of Yarin et al. Applicant submits that, short of improper hindsight reconstruction, there would appear to be no reason to combine the passive, unobtrusive Yarin et al. medication monitoring system with the mobile medical therapy system of LaPorte et al.

Moreover, assuming for the sake of argument that the references were combined in the manner proposed by the Office Action, Applicant submits that the proposed combination would not function. Applicant cannot find in Yarin et al. any indication that the Smart Tray 12 is configured to communicate with an implanted sensor. In fact, Yarin et al. includes “a receptacle that is configured to removably receive and interact with various objects . . . [such as] blood pressure monitors, thermometers, pagers, glucometers, prothrombin and coagulation monitors.” (Yarin et al. at col. 6, lines 39-44.) Of course, the implanted device of LaPorte et al. would be

incapable of being received within such receptacle of Yarin et al. While Yarin et al. does state that wireless communications may be used for the devices of Figs 1 and 2 (*see* Yarin et al. at col. 6, lines 1-5; and Figs 1 and 2), Applicant submits that none of the devices shown or described are implanted within a patient and that wireless communication with a stationary weight scale, for instance, is not akin to wirelessly communicating with a mobile implanted device within a patient. For instance, Applicant can find no description in Yarin et al. related to a structure, module, etc. for proximity detection and synchronization of the Smart Tray of Yarin et al. with any mobile, implanted device, such as the implanted device of LaPorte et al., in order to allow for communication therebetween, as would be necessary for the proposed modified device to function. Therefore, Applicant submits that, even if the references were combined in the manner suggested by the Office Action, the resulting combination would not function to provide communication between the non-ambulatory Smart Tray of Yarin et al. and the ambulatory implanted device of LaPorte et al.

For at least these reasons, Applicant respectfully submits that the proposed combination is improper.

Dependent claims 2-8 depend from independent claim 1; dependent claims 10, 11, 13, 14, and 16-23 depend from independent claim 9; and dependent claims 25-28 depend from independent claim 24. Accordingly, each of these claims incorporate the features of one of claims 1, 9, and 24. For at least reasons analogous to those stated above with respect to claims 1, 9, and 24, claims 2-8, 10, 11, 13, 14, and 16-23, and 25-28 are accordingly believed to be patentable. For brevity, Applicant defers (but reserves the right to present) further remarks, such as concerning any dependent claims, which are believed separately patentable.

For at least these reasons, Applicant submits that claims 1-11, 13, 14, and 16-28 are allowable over the references, in combination with the reasoning set forth in the Office Action, and respectfully requests reconsideration and withdrawal of this rejection.

Reservation of Rights

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such

as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request joinder of any withdrawn claim, as required by MPEP § 821.04.


CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (612) 359-3275 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,
SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 359-3275

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By 
Michael P. Horvath
Reg. No. 57,235

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on December 17, 2008.

Kate Gannon

Name


Signature